

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

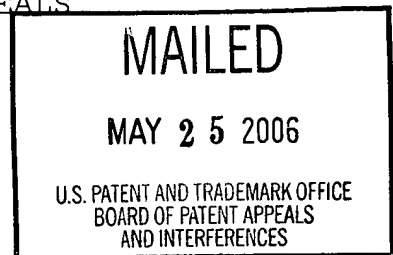
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY F. KRIZAN

Appeal No. 2006-1144
Application No. 09/975,806

ON BRIEF



Before KIMLIN, PAK, and TIMM, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-6 and 8-23. Claim 1 is illustrative:

1. A pigment composition comprising TiO_2 and a TiO_2 stabilizing and anti-agglomeration effective amount of barium sulfate wherein the amount of TiO_2 is in the range from about 65.0 to 95.0 percent by weight and the amount of barium sulfate is in the range from about 5.0 to 35.0 percent by weight, all weights being based on the weight of the total solids content of the composition.

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The examiner relies upon the following references in the rejections of the appealed claims:

Alessandroni	2,212,629	Aug. 27, 1940
Dietz	3,549,396	Dec. 22, 1970
Kreth et al. (Kreth)	4,885,034	Dec. 5, 1989

Appellant's claimed invention is directed to a pigment composition, and the method of making it, comprising TiO_2 and barium sulfate in the recited amounts. The barium sulfate serves to stabilize and act as an anti-agglomeration agent for the TiO_2 .

Appealed claims 1, 3, 4 and 10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kreth. The appealed claims also stand rejected under 35 U.S.C. § 103(a) as follows:

- (a) claims 8, 11, 13, 16 and 18-22 over Kreth,
- (b) claims 5, 6, 13-15 and 17 over Kreth in view of Dietz,
- (c) claims 11, 12 and 17 over Kreth in view of Alessandroni, and
- (d) claims 1-5, 9, 10 and 23 over Kreth in view of Alessandroni.

We have thoroughly reviewed each of appellant's arguments for patentability. However, we find ourselves in complete

agreement with the examiner's reasoned analysis and application of the prior art, as well as the examiner's cogent disposition of the arguments raised by appellant. Accordingly, we will adopt the examiner's reasoning as our own in sustaining the rejections of record, and we add the following for emphasis only.

We consider first the examiner's § 102 rejection of claims 1, 3, 4 and 10 over Kreth. There is no dispute that Kreth, like appellant, describes a pigment composition comprising TiO_2 and barium sulfate, with the amount of barium sulfate preferably being in the range of 5 to 15% by weight. Manifestly, the amount of barium sulfate described by Kreth falls directly within the broader range claimed by appellant. Also, since we find that Kreth fairly describes a pigment composition comprising only TiO_2 and barium sulfate, it follows that the reference composition preferably has an amount of TiO_2 in the range of 95-85% by weight, a range that also falls directly within the claimed range. Consequently, we agree with the examiner that Kreth describes within the meaning of § 102 a pigment composition comprising TiO_2 and barium sulfate wherein the amount of barium sulfate is a stabilizing and anti-agglomeration effective amount, as presently claimed.

The sole argument advanced by appellant is that Kreth "is unlike the present invention claimed which requires only the presence of titanium dioxide and barium sulfate in an amount effective to stabilize and avoid agglomeration of the TiO_2 " (page 7 of brief, second paragraph). However, we agree with the examiner that there are at least two reasons why this argument is not persuasive. First, it is fundamental that the "comprising" language does not preclude the presence of other components in the claimed pigment composition, including the calcium sulfate disclosed by Kreth as a possible component. Secondly, Kreth's disclosure of a pigment composition comprising a mixture of TiO_2 and barium sulfate and/or calcium sulfate, or mixtures thereof, properly qualifies as a description of a pigment mixture of TiO_2 and barium sulfate for purposes of § 102. See In re Schaumann, 572 F.2d 312, 197 USPQ 5 (CCPA 1978). Certainly, the selection from three possible choices of components for the pigment composition is a narrow one that is tantamount to a description of each of the three possibilities. Furthermore, it is significant that Kreth exemplifies a mixture of TiO_2 and barium sulfate.


Appellant does not present separate substantive arguments against the examiner's separate § 103 rejections but, rather,

simply points out that the "secondary references" do not cure the asserted deficiencies of Kreth as discussed in the traversal of the § 102 rejection. We also note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the applied prior art.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sept. 13, 2004).

Edward C. Kimlin
Administrative Patent Judge


Chung K. Pak
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Catherine Timm
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